

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>FIBERCOMM, L.C., FOREST CITY TELECOM, INC., HEART OF IOWA COMMUNICATIONS, INC., INDEPENDENT NETWORKS, L.C., AND LOST NATION-ELWOOD TELEPHONE COMPANY,</p> <p style="text-align:right">Complainants,</p> <p style="text-align:center">vs.</p> <p>AT&T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p style="text-align:right">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-00-3</p>
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**ORDER GRANTING REHEARING FOR PURPOSES OF FURTHER
CONSIDERATION AND GRANTING AND DENYING
MOTION FOR STAY**

(Issued December 14, 2001)

On October 25, 2001, the Utilities Board (Board) issued its "Final Decision and Order" in this docket. On November 14, 2001, applications for rehearing were filed by AT&T Communications of the Midwest, Inc. (AT&T), and FiberComm, L.C., Forest City Telecom, Inc., Heart of Iowa Communications, Inc., Independent Networks, L.C., and Lost Nation-Elwood Telephone Company (collectively, Complainants). Also on November 14, 2001, AT&T filed a motion for a stay of the Board's final decision and order pending the Board's action on the applications for rehearing and while the

Board's action in this docket is the subject of judicial review proceedings in district court if the Board fails to grant the relief requested by AT&T in its application for rehearing.

On November 28, 2001, Goldfield Access Network, L.C. (Goldfield), filed an answer in support of the Complainants' application for rehearing and an answer to AT&T's application for rehearing. On the same day, Complainants filed a response to AT&T's application for rehearing and a resistance to AT&T's motion for stay pending any future judicial review proceedings. (Complainants state they have no objection to a stay of the Board's order during its consideration of the applications for rehearing.) Also on November 28, 2001, AT&T filed a statement of opposition to Complainants' application for rehearing.

On November 29, 2001, Laurens Municipal Broadband Communications Utility and Coon Rapids Municipal Communications Utility filed their response joining in the Complainants' application for rehearing and adopting the Complainants' position regarding AT&T's application for rehearing.

On December 6, 2001, AT&T filed a motion for leave to file a reply to Complainants' response to AT&T's application for rehearing and to Complainants' resistance to AT&T's motion for a stay. The motion for leave to file was accompanied by the reply statements. On December 13, 2001, Complainants filed a response to AT&T's motion.

AT&T's motion for leave to file replies will be denied. AT&T states that the Complainants' response and resistance raised certain arguments for the first time,

making reply statements necessary, but AT&T does not identify the alleged new arguments. Further, the reply statements filed with AT&T's motion are not limited to responding to the alleged new arguments; instead, the replies repeat many of the arguments from AT&T's application for rehearing and motion for stay. If the replies are to be justified as a response to unanticipated new arguments raised by Complainants, the replies should have been limited to those new arguments.

Iowa Code § 476.12 (2001) provides that the Board must either grant or refuse an application for rehearing within 30 days after the filing of the application. The Board will grant both of the applications for rehearing, solely for purposes of further consideration. No additional evidence will be received and no additional briefs or argument will be required.

Section 476.12 also provides that the granting of an application for rehearing does not stay the effectiveness of the Board's final decision and order unless the Board so directs. The Board will grant AT&T's unopposed motion for stay while the Board considers the applications for rehearing, but the Board will deny, without prejudice to re-filing at a later date, the motion for a stay of the Board's order while any subsequent judicial review proceedings are pending. At this time, the need for any such judicial review proceedings is speculative, at best; if AT&T (or any other party) believes a stay pending judicial review is justified after review of the Board's order considering the merits of the applications for rehearing, then AT&T (or any other party) may file a request for a stay at that time. The Board will consider any such request if and when filed, after hearing from all interested parties.

IT IS THEREFORE ORDERED:

1. AT&T's motion for leave to file reply statements, filed December 6, 2001, is denied.
2. The applications for rehearing filed by AT&T and the Complainants on November 14, 2001, are granted solely for purposes of further consideration.
3. AT&T's request for a stay of the Board's October 25, 2001, "Final Decision And Order" while the Board considers the applications for rehearing is granted; AT&T's request for a stay of the same order while judicial review proceedings are pending is denied, without prejudice.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 14th day of December, 2001.